



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond

Case No. 99-H-1116

Of Five Corners GMC Truck, Inc.

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**FINAL DECISION**

On November 18, 1998, Steven Peterson filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Five Corners GMC Truck, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing. On March 8, 1999, a Public Notice of Time to File Dealer Bond Claim was published in the News Graphic, a bi-weekly newspaper published in the City of Cedarburg, Ozaukee County. The notice informed other persons who may have claims against Five Corners GMC Truck, Inc., to file them with the Department by May 7, 1999, and scheduled a hearing on the claims for May 21, 1999. No additional claims were filed.

By letter dated May 11, 1999, the Administrative Law Judge cancelled the hearing and instructed the parties to file any additional materials that they wished to have considered in making the Preliminary Determination by May 21, 1999. On May 18, 1999, Steven Peterson filed a letter and affidavit in support of his claim. A Preliminary Determination based on the documentation contained in the file and required by sec. Trans 140.26(4)(a), Wis. Adm. Code, was issued on June 2, 1999. On June 28, 1999, Steven Peterson filed an objection to the Preliminary Determination pursuant to sec. Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under sec. Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on Friday, September 3, 1999 in Mequon, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Steven P. Peterson, Claimant  
10536 North Gazebo Hill Parkway  
Mequon, WI 53092

Five Corners GMC Truck, Inc., by

Attorney Catherine A. Stock  
N61 W6058 Columbia Road  
P. O. Box 127  
Cedarburg, WI 53012-0127

Capitol Indemnity Corporation  
P. O. Box 5900  
Madison, WI 53705-0900

At the outset of the hearing Five Corners GMC Truck, Inc , (Dealer) stipulated that Steven Peterson's loss in this case had been caused by an act that constitutes grounds for suspension or revocation of its motor vehicle dealer license. The only issue for the hearing was the amount of the loss suffered by Steven Peterson. Mr. Peterson has the burden of proof on this issue. At the hearing, Mr. Peterson did not present any additional evidence, but merely reiterated the evidence he had submitted prior to the issuance of the Preliminary Determination.

Specifically, the testimony he presented is that he had been told in a telephone conversation by someone from the Milwaukee Metropolitan Auto Auction that if two trucks with the same equipment and specifications were each sold five years from now and one vehicle was a 1997 model year and the other was a 1998 model year, the difference in sales price according to an auto/truck dealer black book value could be as much as \$3000.00. Mr. Peterson also testified that he deserved an additional \$1800 00 as punitive damages against the dealer and to compensate him for the time he has spent pursuing this claim. This evidence was considered prior to the issuance of the Preliminary Determination

The Dealer presented evidence at the hearing that the difference in the manufacturer's suggested retail price (M.S.R.P ) for a 1997 model of the type of van purchased by Mr. Peterson was \$21,404.00 and the M S.R.P for the 1998 model was \$21,494.00, a difference of only \$90.00. However, the Dealer had no evidence of the value of a new 1997 model in 1998, which is what Mr. Peterson purchased. Based on common sense alone, most consumers choosing between two essentially identical vehicles would undoubtedly prefer a newer model year. The value of a new 1997 model purchased in 1998 is less than a 1998 model. Neither party presented any evidence at the hearing indicating that the amount of the loss suffered by Mr. Peterson is significantly more or less than the amount found in the Preliminary Determination. The Findings of Fact and Conclusions of Law are unchanged from the Preliminary Determination.

#### FINDINGS OF FACT

I. Five Corners GMC Truck, Inc (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 1266 Washington Avenue, Cedarburg, Wisconsin, 53012.

2 The Dealer has had a bond in force from January 1, 1994 to the present (Bond #578679 from Capitol Indemnity Corporation, Madison, Wisconsin).

3. On June 3, 1998, Steven Peterson purchased a new GMC Model TG31903 Cube Van from the Dealer. According to the purchase contract, Mr. Peterson purchased a 1998 model, VIN 1GDJG31R5V1077541. Mr. Peterson took delivery of the vehicle on June 10, 1998.

4. Approximately one week later, Mr. Peterson discovered that the vehicle he purchased was a 1997 model, not a 1998 model. Section Trans 139.05(2)(b), Wis. Adm. Code, requires a dealer to describe in a purchase contract the vehicle purchased by year, make, model and identification number. The purchase contract prepared by the Dealer did not do so accurately.

5. After he discovered the mistake on the purchase contract, Mr. Peterson contacted the Dealer. The Dealer attempted to locate a 1998 model vehicle to replace the 1997 model sold to Mr. Peterson, but was unable to find one. The Dealer then offered Mr. Peterson a cash settlement to buy back the 1997 GMC Cube Van sold to Mr. Peterson or alternatively, to trade him a 1999 GMC Cube Van for the vehicle he was sold. Mr. Peterson rejected both offers.

6 On November 18, 1998, Mr. Peterson filed a claim against the bond of the Dealer. The bond claim is in the amount of \$4,800.00. The claim is itemized as \$3000.00 for the "year 97-98 discrepancy" and \$1800.00 for "air conditioning not in 1997 vehicle received as was requested for 1998 truck." There is no record that the van purchased by Mr. Peterson included air conditioning. In subsequent correspondence with the Department of Transportation, Mr. Peterson explained that he requested the air conditioning as "further compensation for [the Dealer's reckless] intent of deception "

7. Mr. Peterson sustained a loss in the amount of \$576 00 as a result of an act of the Dealer which would be grounds for the suspension or revocation of its motor vehicle dealer license. The calculation of the loss is set forth in the "Discussion" section below.

8. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity bond was in effect and is; therefore, a timely claim.

#### Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Section Trans 140 21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1 A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within three years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

The Dealer failed to insert the correct model year for the vehicle in the purchase contract. Although there is no evidence that this error was intentional, the Dealer's failure to insert the correct model year in the purchase contract is a violation of sec. Trans 139.05(2)(b), Wis. Adm. Code. This violation is, in turn, a violation of sec. 218.01(3)(a)14, Stats. Section 218.01(3)(a)14, Stats., provides that it is grounds for the denial, suspension or revocation of a motor vehicle dealer license if the dealer has "violated any law relating to the sale, lease, distribution or financing of motor vehicles." Accordingly, Mr. Peterson's loss was the result of an act which could constitute grounds for the suspension or revocation of the Dealer's motor vehicle dealer license.

Mr. Peterson filed a claim in the amount of \$4800.00. Of this claim, \$1800.00 is for air conditioning which Mr. Peterson is seeking as compensation for the Dealer's deception. Punitive damages are specifically disallowed pursuant to sec. Trans 140.21(2)(e), Wis. Adm. Code. Accordingly, this part of the claim can not be allowed. Mr. Peterson is also claiming \$3000.00 for the "year 97-98 discrepancy." His justification for this figure is that he "contacted the Milwaukee Metropolitan Auto Auction in Caledonia, Wisconsin and asked a representative that if [he] were to sell a particular truck 5 years from now and one vehicle was a 1997 and one vehicle was a 1998 with the same equipment and specifications, what could [he] expect the difference in sales price for the year. They told [him] according to an auto/truck dealer black book value it could be approximately \$3500.00." There is no reason to doubt that Mr. Peterson was told this information by someone from the Milwaukee Metropolitan Auto Auction; however, this is an insufficient basis to support Mr. Peterson's claim. There is no indication whether this figure refers to wholesale or retail value of the hypothetical vehicle and what assumptions were made with respect to the mileage, condition and use of the vehicle in Mr. Peterson's hypothetical question.

A more reliable basis to evaluate the difference in value between a 1998 and 1997 model vehicle is the pages from the official Wisconsin Automobile Valuation Guide supplied by the Wisconsin Department of Transportation. The specific model vehicle purchased by Mr. Peterson is not listed in this guide; however, the Department of Transportation employee highlighted the 1998 and 1997 models of the Safari mini extended cargo van model L19, the Safari mini-extended van model L19, and the Savana 4x2 compact cargo van model G39. The difference and the suggested factory retail price between the 1998 and 1997 models of these three vehicles

are \$542.00, \$592.00 and \$594.00 respectively, for an average of \$576.00. This figure is also consistent with Mr. Habich's statement in his March 10, 1999, letter that "the difference between model years is at most \$500.00 when new." The amount of \$576.00 is a reasonable calculation for the loss sustained by Mr. Peterson for the Dealer's failure to correctly list the model year of the purchase vehicle on the purchase contract.

### CONCLUSIONS OF LAW

1. Steven Peterson's claim arose on June 3, 1998, the date he purchased the subject vehicle from Five Corners GMC Truck Inc. The claim arose during the period covered by the surety bond issued by Capitol Indemnity Corporation to Five Corners GMC Truck, Inc.

2. Mr. Peterson filed a claim against the motor vehicle dealer bond of Five Corners GMC Truck, Inc., on November 18, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Mr. Peterson's loss was caused by an act of Five Corners GMC Truck, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license. The evidence in the record supports a claim in the amount of \$576.00. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.

4. The Division of Hearings and Appeals has the authority to issue the following order

### ORDER

The claim filed by Steven Peterson against the motor vehicle dealer bond of Five Corners GMC Truck, Inc., is APPROVED in the amount of \$576.00. Capitol Indemnity Corporation shall pay Mr. Peterson this amount for his loss attributable to the actions of Five Corners GMC Truck, Inc.

Dated at Madison, Wisconsin on October 1, 1999

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By: Mark J. Kaiser

MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE